

MONTANA LEGISLATIVE HISTORY

Chapter 80 19 91

Bill H 480 S _____ Original bill & history C

H. Committee on State Administration

Hearing Date(s) Feb 05 ☒ C

_____ ☐ C

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Date Out Feb 05 ☒ C

S. Committee on Local Govt

Hearing Date(s) Mar 05 ☒ C

_____ ☐ C

_____ ☐ C

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Mar 05 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

EXECUTIVE ACTION ON HB 434

Motion: REP. SIMPKINS MOVED HB 434 DO PASS.

Discussion:

REP. BETTY LOU KASTEN asked for clarification. Lines 11 - 18 clarify the existing language as "must." The sense of the bill is "may." Ms. Heffelfinger said that is correct. In the first part of the bill, the counties must remit the money. In the second part, the inserted language uses the word "may" where the "treasurer may assess 10 percent interest."

Vote: HB 434 DO PASS. Motion carried unanimously.

HEARING ON HB 480Presentation and Opening Statement by Sponsor:

REP. THOMAS LEE, House District 49, Lake County, introduced HB 480, an act to include town employees among those public employees entitled to military leave. The federal statutes require that when National Guard and the Army Reserve personnel go for training they must be restated with all seniority and so forth upon returning. The time they are gone is not accrued against their vacation or annual leave time, and there is no loss of benefits. Almost all levels of public employ have granted that the two weeks of military training is a paid leave with no loss of annual leave time. The present code says that all levels are covered except towns. The bill will amend into the group of public employees those persons who are employed by towns. If the bill is passed, they will have available to them two weeks of paid military leave. He read a 1987 Attorney General's Opinion by Mike Greely stating that the way the statute is currently written that towns are exempt. EXHIBIT 4 It is possible that the current statute could be declared unconstitutional if someone were to challenge it on an equal protection basis -- where public employees do not have access to the same type of benefit that other types of employees of the same class are currently afforded. There is no rational basis for excluding town employees.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members:

REP. ERVIN DAVIS asked what the difference was between a city and a town. CHAIR BROWN said Ms. Heffelfinger would answer that

question during executive session.

Closing by Sponsor:

REP. LEE said the Attorney General's opinion does address some of the definitional aspects of the problem.

EXECUTIVE ACTION ON HB 480

Motion: REP. ERNEST BERGSAGEL MOVED HB 480 DO PASS.

Discussion:

Ms. Heffelfinger said a town has to be incorporated as a municipality by passing a resolution. In Title 7, Ch. 1, Sect. 4-41-11, MCA, the classification of municipalities includes every city having a population of 10,000 or more is a city of first class. Every municipal corporation having a population of less than 1,000 and more than 300 is a town.

Vote: HB 480 DO PASS. Motion carried unanimously.

Motion/Vote: REP. KASTEN MOVED HB 480 BE PLACED ON THE CONSENT CALENDAR. Motion carried unanimously.

HEARING ON SB 41

Presentation and Opening Statement by Sponsor:

SEN. BOB BROWN, Senate District 2, Whitefish, introduced SB 41 to transfer tramway gross receipts from the Department of Revenue (DOR) to the Department of Commerce (DOC). The money obtained from the source totaled about \$25,000 in 1988; in 1990 it was about \$28,000. There is a little fee paid to the DOC by the DOR to cover the cost of safety inspections on the tramways -- ski lifts. There is a relatively minuscule amount of money collected by the DOR and given to the DOC for the same purpose. Since the DOC does collect other fees, by mutual agreement the DOR and DOC think it would be better if the DOC would collect its own fee and handle the matter itself.

Proponents' Testimony:

Charlotte Maharg, Department of Revenue, said the motivation for the bill came from one of the ski lift owners who said, "I have to deal with Commerce in October and you again in December, why can't I do it just once." That makes a lot of sense.

W. James Kembel, Administrator, Public Safety Division, Department of Commerce, said tramway inspections are part of our program. We have no problem with the bill.

HOUSE OF REPRESENTATIVES
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE 2/5/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JAN BROWN, CHAIR	✓		
REP. VICKI COCCHIARELLA, VICE-CHAIR	✓		
REP. BEVERLY BARNHART	✓		
REP. GARY BECK	✓		
REP. ERNEST BERGSAGEL	✓		
REP. FRED "FRITZ" DAILY			
REP. ERVIN DAVIS	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. GARY FELAND	✓		
REP. GARY FORRESTER	✓		
REP. PATRICK GALVIN	✓		
REP. HARRIET HAYNE	✓		
REP. BETTY LOU KASTEN	✓		
REP. JOHN PHILLIPS	✓		
REP. RICHARD SIMPKINS	✓		
REP. JIM SOUTHWORTH	✓		
REP. WILBUR SPRING	✓		
REP. CAROLYN SQUIRES	✓		

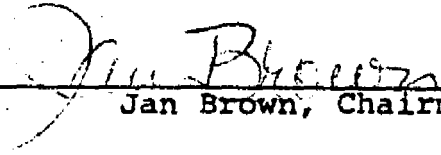
HOUSE STANDING COMMITTEE REPORT

February 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that House Bill 480 (first reading copy -- white) do pass and be placed on consent calendar .

Signed: _____


Jan Brown, Chairman

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

STATE ADMINISTRATION

COMMITTEE

BILL NO.

HB 480

DATE 2/5/91

SPONSOR(S)

REP. ED McCAFFREE

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Thomas Ace	HD 419 Bigfork	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Closing by Sponsor: Representative Larson closed by stating that this bill is a question of taxation without representation. He asked for a do pass on HB-227.

HEARING ON HB-480

Presentation and Opening Statement by Sponsor: Representative Tom Lee, District 49, said this bill is from a wish list by Greg Petesch to clean up laws. As a member of the National Guard, he felt the right to paid leave that the National Guard enjoys should be extended to a town employee. He offered the Attorney General's opinion and a definition of "town" (Exhibit #2).

Proponents' Testimony: none

Opponents' Testimony: none

Questions From Committee Members:

Senator Bengtson asked if a fiscal note was requested?
Representative Lee said there was no fiscal impact.

Senator Beck asked if this bill was restricted to incorporated or unincorporated towns? Representative Lee said this bill is strictly for incorporated towns.

Senator Thayer asked about the definition of municipality in the Exhibit #2, but municipalities are not included in this bill. Representative Lee said they were added to cover any questions about the difference in the language or terminology that relates to the bill. The problem can be attacked two ways: #1 insert the word "municipality, which would include all incorporated towns and cities, or #2. simply add the word "town" to the bill, and the handwritten note on the Exhibit #2 indicates how the code breaks down. Senator Thayer said if "town" is used then you do not need the word "municipality".

Senator Bengtson asked about unincorporated towns?
Representative Lee said they are not affected by this statute. C. Erickson said unincorporated towns do not have a town government, so they have no employees. They are county employees, so they would be covered. Senator Bengtson questioned how water user associations are paid for furnishing water to towns like Worden, Huntley, or Big Fork. Senator Bengtson conceded that we can't do all things in one bill.

Closing by Sponsor: Representative Lee had no closing remarks.

EXECUTIVE ACTION ON HB-480

Motion: Senator Eck moved to Concur in HB-480. The motion carried unanimously and it was recorded as a roll call vote. Senator Eck will carry HB-480.

EXECUTIVE ACTION ON HB-123

Discussion: C. Erickson said the question as to whether the title should be amended. She suggested that it is better to put "self-insured" in the title. She would check with the House Legislative Council to see if there was a reason it was left out of the title.

Senator Hammond said the title should cover all possibilities. So the word government is used, and then in the body of the bill they restrict it. The title doesn't restrict it, so they can make the bill more restrictive, so he saw no problem. C. Erickson said she tends to error on the side of caution.

Senator Vaughn said that state employees are discussed. Senator Harding wondered where the unused funds come from? The secretary read the testimony that these funds come from #1 vacancy savings, and #2. from penalties and interest on delinquent property taxes.

Amendments, Discussion, and Votes: Senator Beck moved to amend the title of HB-123. The motion carried. Amendment (Exhibit 4).

Motion: Senator moved to Concur in HB-123 as Amended. The motion carried and was recorded as a roll call vote. Senator Thayer will carry HB-123.

HEARING ON HJR-7

Presentation and Opening Statement by Sponsor: Representative Don Larson, District 65, this resolution merely extends the will of the House of Representatives that we include school districts and the university system in a recycling incentives program that we developed for state government. It is a simple resolution that encourages them to get into the recycling act. No better place to set an example than in state and local government units. So he asked the committee to pass this resolution through.

ROLL CALL

SENATE LOCAL GOVERNMENT COMMITTEE

DATE 3-5-91

52 LEGISLATIVE SESSION _____

NAME	PRESENT	ABSENT	EXCUSED
Senator Beck	X		ES
Senator Bengtson	X		
Senator Eck	X		
Senator Hammond	X		
Senator Harding	X		
Senator Kennedy	X		
Senator Thayer	X		
Senator Vaughn	X		
Senator Waterman	X		

Each day attach to minutes.

House Bill 480

This bill includes town employees in the group of public employees entitled to leave of absence with pay for attending military training. In 42 Attorney General Opinion 26 (1987), the attorney general ruled that an employee of a town is not entitled to leave with pay. State, city, and county employees are entitled to military leave. This bill merely extends the same right to leave with pay to a town employee that other public employees currently have. It is possible that the statute could be declared unconstitutional on an equal protection basis if challenged. There does not appear to be a rational basis for excluding town employees from the benefit available for other public employees.

Town = 300 to 1000 population
7-1-4111

Cities w/ 10,000 or more = 1st class

Cities less than 10,000; more than 5,000 = 2nd class

Cities less than 5,000; more than 1,000 = 3rd class

Municipal Corp. less than 1,000; more than 500 = town
7-1-4111

Municipality means an entity which incorporates as a city or town
7-1-4121(a)

OPINIONS OF THE ATTORNEY GENERAL

3. Securities issued by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank Board, the Federal National Mortgage Association, and Farm Credit System banks are permissible investments under section 7-6-202, MCA. Mortgage-backed certificates issued by a private entity but guaranteed by the Government National Mortgage Association are not permissible investments under section 7-6-202, MCA. Treasury investment growth receipts represent investments in direct obligations of the United States government permissible under section 7-6-202, MCA.
4. The permissible alternatives for deposit or investment of county general fund moneys, protest fund moneys, and school district moneys differ and are governed, respectively, by sections 7-6-202 to 213, 15-1-402, and 20-9-213(4), MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 26

ARMED FORCES - Town not required to give paid military leave of absence;
CITIES AND TOWNS - Town not required to give paid military leave of absence;
LEAVES OF ABSENCE - Town not required to give paid military leave of absence;
LOCAL GOVERNMENT - Town not required to give paid military leave of absence;
MUNICIPAL GOVERNMENT - Town not required to give paid military leave of absence;
MONTANA CODE ANNOTATED - Sections 7-1-4111, 7-1-4121(9), 10-1-604;
MONTANA CONSTITUTION - Article XI, section 1;
UNITED STATES CODE - 38 U.S.C. §§ 2024(d), 2024(f).

HELD: An employee of a town is not entitled to a leave of absence with pay while attending regular encampments, training cruises, or similar training programs of the organized militia or of the military forces of the United States.

OPINIONS OF THE ATTORNEY GENERAL

17 September 1987

Donald D. Cole
Saco Town Attorney
171 South Central Avenue
Malta MT 59538

Dear Mr. Cole:

Your request for my opinion inquires whether a town employee who is a member of the National Guard is entitled to a leave of absence with pay while attending a training session with the National Guard. The subject of military leave is addressed by section 10-1-604, MCA, as follows:

A state, city, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of 6 months shall be given leave of absence with pay for a period of time not to exceed 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time. [Emphasis added.]

Your letter concludes that this section has no application to a town employee. I agree with your conclusion.

The Montana Constitution defines the term "local government units" to include counties and incorporated cities and towns. Mont. Const. art. XI, § 1. Cities and towns are separately defined entities according to population, as set forth in section 7-1-4111, MCA. The term "municipality" means "an entity which incorporates as a city or town." § 7-1-4121(9), MCA. The plain meaning of the word "city" is not synonymous with the word "town." I cannot insert what the Legislature has omitted. If the Legislature had intended to include towns in section 10-1-604, MCA, it could have expressly done so either by enumeration or by utilization of the term "local government units" or "municipalities." As a rule in statutory construction, expressio unius est exclusio alterius, i.e., the expression of one excludes the other. I conclude that section 10-1-604, MCA, does

OPINIONS OF THE ATTORNEY GENERAL

not apply to a town, and that a town is therefore not required to grant paid leaves of absence for military training.

According to federal law, a public or private employer must grant a leave of absence for the period required to perform active duty for training or inactive duty training in the armed forces of the United States, including the National Guard. 38 U.S.C. §§ 2024(d), (f). The federal law further provides: "Upon such employee's release from a period of such active duty for training or inactive duty training, or upon such employee's discharge from hospitalization incident to that training, such employee shall be permitted to return to such employee's position with such seniority, status, pay, and vacation as such employee would have had if such employee had not been absent for such purposes." 38 U.S.C. § 2024(d). While the section is ambiguous with respect to whether the leave of absence must be given on a paid or unpaid basis, it has been determined that the Veteran's Reemployment Rights Act does not require an employer to pay a reservist for the time he is away on reserve training duty but only requires that a reasonable request for an unpaid leave of absence upon proper notice be granted. Hilliard v. New Jersey Army National Guard, 527 F. Supp. 405 (D.N.J. 1981).

THEREFORE, IT IS MY OPINION:

An employee of a town is not entitled to a leave of absence with pay while attending regular encampments, training cruises, or similar training programs of the organized militia or of the military forces of the United States.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 27

LIENS - Definition of "owner" of real property being purchased under a contract for deed;
TAXATION AND REVENUE - Definition of "owner" of real property being purchased under a contract for deed;
MONTANA CODE ANNOTATED - Sections 15-8-601; 15-16-402(1);
OPINIONS OF THE ATTORNEY GENERAL - 9 Op. Att'y Gen. at 440 (1920-22), 23 Op. Att'y Gen. No. 114 (1950).

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 3-5-91 Bill No. HB-480 Time 3:35 P.m.

NAME	YES	NO
Senator Beck	X	
Senator Bengtson	X	
Senator Eck	X	
Senator Hammond	X	
Senator Harding	X	
Senator Kennedy	X	
Senator Thayer	X	
Senator Vaughn	X	
Senator Waterman	X	

Joyce Inchauspe-Corson
Secretary

Senator Esther Bengtson
Chairman

Motion: move to Concure in HB-480

Senator Eck will carry HB-480

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 5, 1921

MR. PRESIDENT:

We, your committee on Local Government having had under consideration House Bill No. 480 (third reading copy -- blue), respectfully report that House Bill No. 480 be concurred in.

Signed: *Edw. Bengtson*
Edw. G. Bengtson, Chairman

Edw. Bengtson
Amd. Coord.

J. R. 6 12:55
Sec. of Senate